



Environmental Professionals' Organization of Connecticut
P.O. Box 176
Amston, Connecticut 06231-0176
Phone: (860) 537-0337

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Environment Committee
Senator Meyer, Representative Roy and Members of Environment Committee

Testimony submitted by Seth Molofsky, Executive Director
Environmental Professionals' Organization of Connecticut (EPOC)

**Raised Senate Bill No. 1106: AN ACT CONCERNING THE PROCESS OF
REMEDATION OF RELEASES OF HAZARDOUS WASTE AND HAZARDOUS
SUBSTANCES**

I am submitting this testimony on behalf of the Environmental Professionals' Organization of Connecticut (EPOC). EPOC was formed in 1996 to represent the interests of Connecticut's Licensed Environmental Professionals (LEPs) by providing information, training and updates regarding the LEP program in Connecticut. The organization has approximately 500 members representing numerous technical disciplines all working in the area of investigation and cleanup of environmentally-impacted sites in Connecticut.

EPOC supports the general concepts set forth in Raised Bill 1106 subject to the specific comments listed below. However, EPOC strongly believes that passage of this Bill prior to significant revisions to the underlying Remediation Standard Regulations (RSRs) [RCSA 22a-133k-1 through 22a-133k- 3] will result in an unworkable and unmanageable regulatory process. Specifically, the RSRs, as presently promulgated, did not contemplate being applied to minor releases as set forth in RB 1106 and do not provide sufficient flexibility to rapidly and cost effectively close out releases.

Revisions to the RSRs are currently being proposed by the Connecticut Department of Environmental Protection (CTDEP) and are expected to be published for public comment in the immediate future. Once the revisions are fully vetted and promulgated, the true impact of RB 1106 can be fully analyzed. Therefore, EPOC respectfully recommends that RB 1106 be referred for study and that a task force be established to evaluate its impact and that a report be provided for the 2010 legislative session.

In addition to the general concerns stated above, EPOC has the following specific comments:

Section 4: Re Section 22a-6u: Line 392 requires posting of "such notice" but does not describe what "such notice" consists of.

Sections 5(a)(2) (new addition to Section 22a-6u), Section 6(a)(2) (changes to 22a-6u??) and Section 10 (20) (changes to 22a-134) each have a definition of "Interim Verification" and each definition is different. The multiple meaning of "interim verification" would cause confusion to all parties in the future. EPOC recommends that a single definition be consistently used and

recommends that the definition of Section 6(a) (2)(A) through (C) (lines 503 to 512) be used provided that "soil" is inserted prior to the word remediation. This insertion is necessary because, as written, Section 6(a)(2)(B) is in direct conflict with the following section (6)(a)(2)(C) since (B) requires an interim verification that remediation is complete and (C) requires identification of long-term remedies for groundwater remediation. It is apparent that (B) should refer to the soil related remediation.

Section 5(c)(2)(B) (new addition to Section 22a-6u): The section seems to indicate that if a significant environmental hazard is caused by an adjacent property owner, the owner of the property with the significant environmental hazard must both investigate and remediate the neighbor's property. Clearly this requirement is unfair and unreasonable to any property owner. EPOC recommends that language be modified to indicate that the property owner provide notice to CTDEP and that CTDEP pursue remedies on the neighboring property.

Section 5(c): This section makes all significant environmental hazards subject to the RSRs. While this may be justifiable at some facilities, many Significant Environmental Hazards could be related to highly concentrated but surficial releases that don't impact groundwater. Imposition of all requirements of 22-133k may be unwarranted and overly burdensome.

Section 5(d): This section indicates that remedial action plans (RAP) required to be submitted under Section 5(c) within three years of notice of the significant environmental hazard must be approved by the Commissioner. Since Section 5(c) also indicates that remediation must be completed within six years, the requirement for approval of the remedial action plans is of significant concern. Based on history, approvals from CTDEP can take many months to years. First, if CTDEP is requiring LEP verifications under this program, the RAP should not be subject to CTDEP approval. Second, at a minimum, there must be a mechanism to extend the six year time frame to accommodate circumstances that may arise to prevent remediation within this time frame. As required by Section 5(b), the owner would already have taken action to abate the hazard by way of at least an emergency interim remedial measure.

Section 5(e): Requires reports, plans, etc. to be on a form prescribed by the Commissioner. The forms for reports, etc. have not been developed and it is difficult to understand how a "form" could be adequate to present a report of investigation and remediation. EPOC recommends the language be modified that reports, etc. be accompanied by a transmittal form prescribed by the Commissioner.

Section 5(f): Indicates that the Commissioner may audit a final verification, but shall not conduct an audit after 3 years. Similar provisions should be included for an interim verification since the interim verification would (by inference of the definition) include complete remediation for soil.

Section 5(g): This section exempts heating oil releases from underground storage tanks at one to four-family residences. While we agree that an exception of this type is important, EPOC recommends that the exemption language be modified to be consistent with the release reporting

exemptions included in the Underground Storage Tank Regulations Sections 22a-449(d)1 and 22a-449(d) 101). Under the Underground Storage Tank Regulations, underground storage tanks used for the storage of heating oil for on-site use and less than 2,100 gallons are exempted.

Section 6: This section appears to be a modification of 22a-450 but as written could be inferred to be a continuation of 22a-6u. If the section is part of 22a-6u at a minimum; this would put two definition sections in the same statute with differing language. As part of 22a-6u this section would also create additional and potentially conflicting burdens on persons required to conduct activities under 22a-6u as amended by sections 1 through 5 above. Further, it would appear to cause new obligations for investigation and remediation that do not currently exist under 22a-450.

Section 6(c) indicates that "any person," etc. "required to report" .."under 22a-450" shall remediate. EPOC notes that the reporting requirements under 22a-450 have been the subject of debate for years and that many conflicting views of reportable releases under 22a-450 exist. Until 22a-450 is modified or clarified, requiring investigation and remediation of releases that any "person", etc. is "required to report" adds significant confusion and an enormous burden on the regulated community. In addition, the requirements in this section will be unreasonable and unfair in the case of most real-time releases. Many releases are small and easily contained and remediated contemporaneously with the release by limited efforts. To then impose requirements to engage an LEP, perform full investigation, develop remedial action plans and impose requirements for groundwater investigation and remediation will significantly increase costs with no environmental benefit.

Section 6(e) (Fees): Essentially this section imposes fees starting at the end of two years for releases that were "required to be reported" and continuing on an annual basis until the release investigation and remediation has a final verification. As written, the section is confusing regarding what fees are imposed at what time frames. Additionally, since remediation is not required to be completed for six years, we recommend that the fees not begin until that six year period has expired.

Section 6(g) (exemptions): This section exempts heating oil releases from underground storage tanks at one to four-family residences and exempts releases of 10 gallons or less of diesel or heating fuel from any source. While we agree that an exception of releases at one to four family residences is important, EPOC recommends that the exemption language be modified to be consistent with the release reporting exemptions included in the Underground Storage Tank Regulations Sections 22a-449(d)1 and 22a-449(d) 101). Under the Underground Storage Tank Regulations, underground storage tanks used for the storage of heating oil for on-site use and less than 2,100 gallons are exempted. We further recommend that the 10-gallon exemption for diesel or heating fuel from any source be modified to more generally apply to petroleum products from any source.

Section 6(h): Requires reports, plans, etc. to be on a form prescribed by the Commissioner. For reasons provided to section 5(h), EPOC recommends the language be modified that reports, etc. be accompanied by a transmittal form prescribed by the Commissioner.

This section also indicates that the Commissioner may audit a final verification, but shall not conduct an audit after 3 years. Similar provisions should be included for an interim verification since the interim audit verification (by definition) would include complete remediation for soil.

Section 10 (20): This is the third definition provided for Interim Verification. As noted above, EPOC recommends using a modified version of Interim Verification provided in Section 6(a)(2). The version provided in Section 10 (20) is overly stringent in requiring (in subpart D) that there are no current exposure pathways to the groundwater area that has not yet met the remediation standards. As an example, even if groundwater criteria are only slightly above surface water protection criteria (which is not unusual, particularly for metals), an Interim Verification could not be provided. However, if this definition is used, EPOC recommends that subpart (D) be modified to refer to "no unabated Significant Environmental Hazards to the groundwater area that has not yet met the remediation standards" rather than to "no current exposure pathways to the groundwater area that has not yet met the remediation standards."

Section 11: Section 22A-134a(g) (3) (A): Indicates that the Commissioner may audit a final verification, but shall not conduct an audit after 3 years. Similar provisions should be included for an Interim Verification and for a Portion Verification since the Interim Verification would (by definition) include complete remediation for soil at the establishment and a Portion Verification would include complete remediation (including groundwater) for a portion of the establishment.

Thank you for the opportunity to present EPOC's views on Raised Senate Bill No. 1106. If you have any questions, please contact me at (860) 537-0337, or Ted Sailer, Chair of EPOC Legislative Committee at (203) 245-7744.